IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 714 OF 2004

KANCHAN HARISH GANDHI)
residing at 17/A/4, Mahatma)
Gandhi Nagar, Mahul Road,)
Chembur, Mumbai) .. PETITIONER
vs
1. STATE OF GOA)
through the Secretary (Home))
to the Govt. of Goa)

2. ASHWANI KUMAR)
Secretary (vigilance) to the)
Govt. of Goa, Office of)
Secretary (Vigilance),)
Secretariat, Panaji, Goa.)

3. JAIL SUPERINTENDENT)
Central Jail, Panaji, Goa)

4. The Hon'ble Advisory Board)
C/o Under Secretary Home)
Department,Secretariat)
Panaji, Goa.) .. RESPONDENTS
Mr. J. Peter D'Souza and Mrs. A.M.Z. Ansari for petitioner
Mr. Vineet B. Naik for respondents
Mrs. A.S. Pai, APP for State

CORAM:-SMT. RANJANA DESAI &
A. S. OKA, JJ.
DATED:-23-9-2004

ORAL JUDGMENT:-(Per Smt. Ranjana Desai, J.)

The petitioner is the wife of one Harish Kaku Gandhi ("the detenu" for convenience). In this petition she has challenged the order dated 23rd October, 2003, issued by Secretary (Vigilance) to the Government of Goa (Detaining Authority) under Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities ("COFEPOSA" for short) Act 1974 with a view to preventing the detenu from indulging in activities prejudicial to conservation or augmentation of foreign exchange.

2. Though several grounds are raised in the petition, Mrs. Ansari, learned counsel appearing for the petitioner chose to canvass only one of them. She contended that the detenu had addressed a representation dated 14th November, 2003 to the detaining authority, to the Advisory Board, to the State Government and to the Central

Government. The said representation was forwarded by the jail and it was received by the detaining authority on 25th November, 2003. The detaining authority rejected it on 25.11.2003. However, the rejection reply was not communicated to the detenu. Relying on the judgment of the Supreme Court in Harish Pahwa v. State of U.P. & Ors., A.I.R. 1981 S C 1126 and a Division Bench decision of this Court in Smt. Rekha Kamlesh Shah v. The Union of India & Ors., 1990 ALL MR Cri.) 716, the learned counsel contended that on account of non-communication of the rejection reply, the continued detention of the detenu is vitiated.

3. We have also heard Mr. Naik, learned Counsel appearing for the respondents.

4. Mr. Naik has drawn our attention to the detaining authority's affidavit where it is stated that the representation was received by him on 25.11.2003, he considered it and rejected it on the same day. There is, however, no indication in the affidavit whether the rejection reply was communicated to the detenu. No affidavit is filed by the jailor of the jail, where the detenu is detained, to state whether the rejection reply was communicated to the detenu or not.

5. We had, therefore, requested Mr. Naik to call for the necessary record from the detaining authority and the concerned jail. Accordingly today Mr. Naik has made available the record to us. On instructions from Mr. S. P. Dixit, Special Secretary (Home) and D. S. Chavan, Under Secretary (Home) who are present in the court, Mr. Naik has made a statement that in fact the rejection reply has not been communicated to the detenu. He further states that the State Government has not considered the representation at all. This statement of Mr. Naik is supported by the record.

6. In Harish Pahwa's case (supra), the Supreme Court has emphasised that the representation of the detenu must be dealt with the utmost expedition. It must be taken for consideration as soon as such a representation is received and dealt with continuously until a final decision is taken and communicated to the detenu.

7. In view of this position of law it will have to be held that the continued detention of the detenu is vitiated. Hence the following order:

"The petition is allowed. The continued detention of the detenu Harish Kaku Muljimal Gandhi under impugned order of detention dated 23.10.2003 is quashed and set aside. The detenu Harish Kaku Muljimal Gandhi is directed to be released forthwith unless otherwise he is required in any other case.

Petition is disposed of.

(SMT. RANJANA DESAI, J.)

(A. S. OKA, J.)

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Mr. Vineet B. Naik for respondent
Mrs. A.S. Pai, APP

CORAM:-SMT. RANJANA DESAI &
A. S. OKA, JJ.
DATED:-23-9-2004

P.C.

For the reasons recorded separately in the oral judgment, following is the operative part of the order:

"The petition is allowed. The continued detention of the detenu Harish Kaku Muljimal Gandhi under impugned order of detention dated 23.10.2003 is quashed and set aside. The detenu Harish Kaku Muljimal Gandhi is directed to be released forthwith unless otherwise he is required in any other case.

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(SMT. RANJANA DESAI, J.)

(A. S. OKA, J.)